

Law Offices of

OLSON

HAGEL &

FISHBURN

LLP

April 24, 2007

Ms. Hyla P. Wagner  
Senior Commission Counsel  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814-0886

**RE: Proposed Regulation 18466**

Dear Ms. Wagner:

I am writing to encourage the staff to revise proposed regulation 18466 before adoption by the Commission. I have two specific concerns about the regulation as proposed at the April Commission meeting. First, section (a)(2) would make compliance by the regulated community difficult and confusing without supplying the public with additional, relevant information. Second, the authority to interpret the word "single" ballot measure in section 84204.5 to mean "multiple" measures seems doubtful. This letter will detail those concerns, and offer suggested regulatory language to address each issue raised.

My first concern is the difficulty committees will have in complying with subdivision (a)(2) of the regulation. If regulation 18466 is adopted as written, recipient committees which contribute \$5,000 or more to a general purpose ballot measure committee which supports or opposes one or more state ballot measures must file a report within 10 business days, disclosing the contribution made, including the name of the ballot measures supported, as well as any contributors to the committee of \$100 or more since its last campaign report was filed. However, the proposed regulation provides no guidance to a contributor committee on how to determine if a ballot measure committee is formed to support or oppose one or more state ballot measures.

General purpose committees are not required to list the ballot measures they may support or oppose on their Statements of Organization. Thus, information needed to comply with (a)(2) of the regulation is not publicly available or easy to determine. A committee wishing to comply with the requirement would have difficulty preparing an accurate report. While not stated in the proposed regulation, left unanswered is whether a contributing committee would have an affirmative duty to contact the general purpose ballot measure committee to determine if the committee is supporting or opposing one or more state ballot measures. Such a requirement would be burdensome and likely lead most contributor committees to simply file a report on the chance the general purpose committee is supporting or opposing specific ballot measures. This in turn could lead to misleading public information.

Lance H. Olson  
Bruce J. Hagel  
Diane M. Fishburn  
Elizabeth L. Gade  
Deborah B. Caplan  
N. Eugene Hill  
Richard C. Mladich  
Richard R. Rios  
Rebecca J. Olson  
William B. Tunick

I would also note that Section (a)(2) adds nothing in terms of addressing the problem the statute was aimed at eliminating. As stated in the March 26<sup>th</sup> staff memo, the statute was enacted to prevent ballot measure proponents delaying disclosure of their financial supporters by funding a ballot measure through a general purpose committee as was done in the Small Business Action Committee (SBAC) matter. However, under section 84204.5 the recipient committee contributors to a primarily-formed ballot measure committee, like SBAC, would be required to disclose both its contributions to the primarily-formed ballot measure committee and its own contributors of \$100 or more to it since the date of its last campaign report. Since SBAC would now be required to report the contributions made and the contributions received, requiring contributors to SBAC to disclose the contribution to SBAC and its contributors within 10 days under subdivision (a)(2) is redundant and burdensome, and does not disclose additional relevant information to the public about who is supporting or opposing the ballot measure.

My second concern stems from the authority of the Commission to interpret the word "single" state ballot measure as stated in the statute to mean "multiple" state ballot measures in its regulation. Section 84204.5 requires the reports to be filed each time a committee "makes contributions totaling \$5,000 or more . . . to support or oppose the qualification of a *single* state ballot measure" [*emphasis added*]. The Commission staff's interpretation is inconsistent with the statute because subdivision (a)(1) and (2) change the plain meaning of the statute to mean "one or more state ballot measure(s)." As interpreted by staff, the regulation will impose additional reporting requirements not intended by the Legislature that are confusing to the regulated community. The current draft regulation section (a)(1) would require a contributing committee making a \$5,000 contribution to a ballot measure committee primarily formed to support two state ballot measures to report its contribution even though only \$2,500 was intended to be used to support each measure.

In order to address both of these concerns, we propose the following changes to subdivision (a) of the proposed regulation:

(a) The disclosure requirements of Government Code section 84204.5 apply to a committee formed pursuant to Government Code section 82013(a) that has online filing obligations under Government Code section 84605, when the committee does any of the following:

(1) Makes contributions totaling five thousand dollars (\$5,000) or more to a primarily formed committee, as defined in Government Code section 82047.5, that supports or opposes the qualification or passage of ~~one or more~~ a *single* state ballot measure(s);

~~(2) Makes contributions totaling five thousand dollars (\$5,000) or more to a general purpose ballot measure committee that supports or opposes the qualification or passage of one or more state ballot measure(s);~~

~~(3)~~ (2) Makes independent expenditures totaling five thousand dollars (\$5,000) or more to support or oppose the passage or qualification of a state ballot measure.

Ms. Hyla P. Wagner  
April 24, 2007  
Page 3

*(c) In order to determine whether the threshold amount is met requiring a report pursuant to subdivision (a)(1), contributions to committees primarily formed to support or oppose multiple ballot measures should be determined by weighting the contribution equally among all measures supported or opposed. If the contribution as weighted totals five thousand dollars (\$5,000) or more to a single state ballot measure, a report is required.*

The changes to the regulation above will make the requirements easier for the regulated community to follow while still providing the public with timely, relevant information about the supporters and opposition to state ballot measures, and reflect the intent of the Legislature in its adoption of 84204.5.

Please do not hesitate to contact us if you have questions.

Very truly yours,

**OLSON HAGEL & FISHBURN LLP**



REBECCA J. OLSON

RJO